



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO OMEGA PROTEIN, INC. VPDES Permit No. VA0003867

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Omega Protein, Inc., regarding its Reedville, Virginia facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping. Va. Code § 62.1-44.34:14.
6. "Facility" or "Plant" means the Omega facility located in Reedville (Northumberland County), Virginia, which treats and discharges treated sewage and industrial wastes generated at the Facility.
7. "Omega" means Omega Protein, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Omega is a "person" within the meaning of Va. Code §§ 62.1-44.3 and 62.1-44:14. Omega is also an Operator within the meaning of Va. Code § 62.1-44.34:14.
8. "NRC" means the National Response Center a federally established national point of contact for reporting oil, chemical, radiological, biological and etiological discharges into the environment anywhere in the United States and its territories.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity. Va. Code § 62.1-44.34:14.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0003867, which was issued under the State Water Control Law and the Regulation to Omega on December 2, 2005 and which expired on December 1, 2010. The Permit was administratively continued, and re-issued by the Department on June 10, 2011.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present

or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Omega owns and operates the Plant in Reedville (Northumberland County), Virginia. The Permit allows Omega to discharge treated industrial wastes and stormwater from the Plant to Cockrell Creek, and industrial wastes from fishing vessels into the Chesapeake Bay, in strict compliance with the terms and conditions of the Permit.
2. Cockrell Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law. Cockrell Creek is located in the Chesapeake Bay Basin. During the 2010 305(b)/303(d) Water Quality Assessment, Cockrell Creek was listed as impaired for Fish Consumption Use due to a Virginia Department of Health ("VDH") advisory for polychlorinated biphenyls ("PCBs"), for Recreation Use due to high levels of *enterococci*, and for Aquatic Life Use due to inadequate submerged aquatic vegetation. A portion of Cockrell Creek is impaired for Shellfish Consumption Use due to a VDH condemnation. In addition, benthic alteration and arsenic in fish tissue are considered non-impairing observed effects. Wildlife Use

was fully supporting. A bacterial Total Maximum Daily Load (“TMDL”) for Cockrell Creek was approved by the EPA on December 8, 2008, and by the Board on April 28, 2009. Omega received wasteload allocations for fecal coliform and *enterococci*.

3. The Chesapeake Bay is a “state water” under State Water Control Law. During the 2010 305(b)/303(d) Water Quality Assessment, the segment of the Chesapeake Bay affected by Omega was impaired for Aquatic Life Use due to degraded benthic community, insufficient submerged aquatic vegetation, and low dissolved oxygen levels in Deep Water and Deep Channel Use areas. In addition, the area was impaired for Fish Consumption Use due to a bay-wide VDH advisory for PCBs in striped bass. Shellfish Use was fully supporting, and Recreation and Wildlife Uses were not assessed. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. Omega Protein is considered a significant wastewater discharger to the Bay and was assigned individual wasteload allocations for total nitrogen, total phosphorus, and total suspended solids.
4. During the morning of October 27, 2009, Omega personnel discovered a sheen upon Cockrell Creek. A seal on a diesel pump for an Omega fishing vessel had failed during the early morning of October 27, 2009, and caused a discharge of approximately 50 gallons of oil, in the form of diesel fuel, into Cockrell Creek. The discharged oil was contained by a boom, and Omega reported the discharge to the NRC at 7:53 a.m. on October 27, 2009. The NRC in turn notified DEQ at 8:03 a.m. on October 27, 2009. Wind and tidal conditions trapped the diesel against Omega’s bulkhead facilitating cleanup. The U.S. Coast Guard commended Omega on their cleanup efforts. The estimate on the amount of oil discharged was adjusted to approximately 10 gallons. To prevent recurrence of the discharge, Omega has installed a new pumping system with a timer to avoid prolonged operating time.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
6. During a compliance inspection conducted on November 5, 2009, DEQ staff observed newly installed dissolved air flotation unit in operation in the treatment train discharging to permitted Outfall 002. Omega also had purchased an ultraviolet disinfection unit which was on site but not installed. Omega notified DEQ of the planned installation of this equipment in February 2009, but did not provide a Conceptual Engineering Report (“CER”), as required by Va. Code § 62.1-44.16 and failed to provide notification as required by Permit Part II.J.1.a. A CER was received at PRO on March 4, 2010.
7. Discharge logs obtained by DEQ indicate that Omega vessels discharged refrigeration water from several fishing vessels into the Chesapeake Bay on November 5, 6, 9, 10, 11, 13, 14, 15, 16, and 19, 2009. Omega did not conduct water quality monitoring during any refrigeration water discharges during November 2009.

8. Part I.B.3.d of the Permit requires monitoring of pH, ammonia, temperature, dissolved oxygen, salinity, and 5-day biological oxygen demand twice a month in the location to which refrigeration water is discharged, before and after the discharge.
9. Adverse weather conditions during the month of November made Bay sampling dangerous. The newly issued VPDES Permit changes the sampling point for fishing vessel discharges from the Bay after discharge to in the vessel prior to discharge. Omega collected two additional refrigeration water samples in December to replace the missed sampling event.
10. On December 2, 2009, a contractor hired by Omega, accidentally punctured an above-ground storage tank used to hold fish solubles, which includes, in part, fish oil. Fish oil is "oil", as that term is defined in Code § 62.1-44.34:14. This oil was spilled onto the ground surrounding the tank, and a rainstorm on December 2 and 3, 2009, washed approximately 30 gallons of the oil across the ground and into Cockrell Creek. Facility personnel observed a sheen upon or discoloration of Cockrell Creek on the morning of December 3, 2009, at which time the event was verbally reported to DEQ. The discharged oil was removed from Cockrell Creek, and the ground on which oil was spilled was remediated. Omega had specifically instructed the contractor not to touch this or the other two above-ground storage tanks at the Facility. The contractor was terminated in response to the discharged oil. Omega spent approximately \$285,000 on the clean up.
11. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
12. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
13. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
15. The Department has issued no permits or certificates to Omega for discharges to State waters other than VPDES Permit No. VA0003867.
16. On November 30, 2009, DEQ issued a Warning Letter for the unauthorized discharge of oil, in the form of diesel fuel on October 27, 2009. On December 28, 2009, DEQ issued a Warning Letter for Omega's failure to conduct water quality monitoring during the

month of vessel refrigeration water discharges (November 2009). On January 22, 2010, DEQ issued a Notice of Violation for the unauthorized discharges of oil in two forms, diesel fuel and fish oil, failure to give notice prior to installing new equipment, and Omega's failure to conduct water quality monitoring during a month of vessel refrigeration water discharges.

17. Omega responded to the Notice of Violation and indicated that containment and cleanup of the discharges of oil was completed, faulty equipment was repaired, and the contractor involved in the discharge of fish oil had been terminated. Omega indicated that a CER had been submitted for the dissolved air flotation and ultraviolet disinfection units on March 4, 2010.
18. Based on the results of November 5, 2009 inspection, discharge monitoring report for the month of November 2009 and vessel discharge logs for November 2009, the Board concludes that Omega has violated the Permit and Va. Code §§ 62.1-44.5, 62.1-44.16 and 9 VAC 25-31-50, by discharging treated industrial wastes from the Plant and fishing vessels while concurrently failing to comply with the conditions of the Permit, as described in Section C above. Based on reports received from Omega on November 13, 2009 and December 3, 2009 the Board concludes that Omega has also violated § 62.1-44.34:18.
19. Omega has submitted documentation that verifies that the violations as described in Section C above have been resolved and no further action is required. Omega has expended approximately 20 million dollars over the last 5 years for environmental improvements at the Facility.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 and 62.1-44.34:20, the Board orders Omega, and Omega agrees to pay a civil charge of \$4,050 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Omega shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Omega for good cause shown by Omega, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Omega admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Omega consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Omega declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Omega to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Omega shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Omega shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Omega shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Omega. Nevertheless, Omega agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Omega has completed all of the requirements of the Order;
 - b. Omega petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Omega.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Omega from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Omega and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Omega certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Omega to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Omega.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Omega voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of SEPTEMBER, 2011.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Omega Protein, Inc., voluntarily agrees to the issuance of this Order.

Date: 27 Jul 2011 By: [Signature], General Manager
(Person) (Title)
Omega Protein, Inc.

Commonwealth of Virginia

City/County of Northumberland

The foregoing document was signed and acknowledged before me this 27th day of
July, 2011, by Monty Deihl who is
General Manager of Omega Protein, Inc., on behalf of the corporation.

[Signature]
Notary Public

7502667
Registration No.

My commission expires: 06/30/15

Notary seal:

